

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-0595V

Filed: July 24, 2017

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PATRICIA MILLER,

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Petitioner,

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v.

Attorneys' Fees and Costs;
Hourly Rate Reduction.

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SECRETARY OF HEALTH
AND HUMAN SERVICES,

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Respondent.

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Jeffrey S. Pop, Attorney at Law, Beverly Hills, CA, for petitioner.

Christine M. Becer, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING ATTORNEYS' FEES AND COSTS¹

Dorsey, Chief Special Master:

On June 2, 2017, Patricia Miller ("petitioner") filed a motion for attorneys' fees and costs, requesting \$15,461.50 in attorneys' fees for her counsel, Jeffrey Pop, and \$878.44 in attorneys' costs, for a total of \$16,339.94. Petitioner's Application ("Pet. App.") dated June 2, 2017 (ECF No. 34). Petitioner did not incur any costs. Pet. App., Ex. 4 at 1. Respondent filed a response on June 19, 2017, stating that he does not object to the overall amount sought. Respondent's Response dated June 19, 2017 (ECF No. 35) at 1. Petitioner filed a reply on June 22, 2017.

For the reasons discussed below, the undersigned GRANTS petitioner's motion for fees and costs and awards a total of \$16,175.31.

I. Introduction

On May 19, 2016, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, et seq.,² (the "Vaccine

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

Act"). Petitioner alleged that she received a tetanus-diphtheria-acellular pertussis ("Tdap") vaccine on July 11, 2014, and thereafter suffered from left shoulder pain and cellulitis which was caused-in-fact by the Tdap vaccine. Petition at 1; Stipulation, filed April 10, 2017, at ¶ 4. On June 10, 2017, the undersigned issued a decision awarding compensation to petitioner in the amount of \$99,092.40.

II. Reasonable Attorneys' Fees

Under the Vaccine Act, the special master shall award reasonable attorneys' fees and costs for any petition that results in an award of compensation. 42 U.S.C. §300aa-15(e)(1). In this case, petitioner was awarded compensation and therefore is entitled to an award of reasonable attorneys' fees and costs.

a. Reasonable Hourly Rates

Mr. Pop requests \$420.00 per hour for work performed in the case from 2014-2017. Pet. App., Ex. 2 at 2. However, the undersigned has previously awarded Mr. Pop only \$400.00 per hour for work performed in 2014-2015 and will continue to do so. Mr. Pop's request for \$420.00 per hour in 2016-2017 is reasonable and falls within the 2015-2016 and 2017 Hourly Rate Fee Schedules.³ Thus, the undersigned awards Mr. Pop \$420.00 per hour for work performed in 2016 and 2017, reducing petitioner's application by \$36.00.

Ms. Gregorian requests \$250.00 per hour for work performed between 2014-2017. Pet. App., Ex. 2 at 2. She was admitted to practice law in the State of California in 2012, placing her in a fee range for attorneys with less than four years of practice for the years 2014-2015 and a range for attorneys with four to seven years of practice for the years 2016-2017. The undersigned thus adjusts Ms. Gregorian's rate to \$235.00 per hour for work performed in 2014-2015 and \$250.00 per hour for work performed in 2016-2017. Accordingly, the undersigned reduces petitioner's application by \$4.50.

The remainder of the firms' requested hourly rates, including rates for paralegals and law clerks, fall within the 2015-2016 and 2017 Fee Schedules, and the undersigned finds them reasonable and awards them in full.

The undersigned has reviewed the billing records submitted with petitioner's request. In her experience, the request appears reasonable, and thus she will not further reduce the requested hours.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

³ The 2015-2016 Fee Schedule can be accessed at: <http://www.cofc.uscourts.gov/sites/default/files/Attorneys-Forum-Rate-Fee-Schedule2015-2016.pdf>. The 2017 Fee Schedule can be accessed at: <http://www.cofc.uscourts.gov/sites/default/files/Attorneys-Forum-Rate-Fee-Schedule-2017.pdf>. The hourly rates contained within are from the decision McCulloch v. Sec'y of Health & Human Servs., No. 09-093V, 2015 WL 5634323 (Fed. Cl. Spec. Mstr. Sept. 1, 2015).

III. Reasonable Costs

Like attorneys' fees, a request for reimbursement of costs must be reasonable. Perreira v. Sec'y of Health & Human Servs., 27 Fed. Cl. 29, 34 (Fed. Cl. 1992). Petitioner's counsel requests \$878.44 in attorneys' costs for expenses incurred by the firm. Pet. App., Ex. 3 at 2. Counsel requests reimbursement for costs related to collecting and copying medical records, paying the filing fee, and postage. Id. The undersigned finds these costs reasonable and awards them in full.

IV. Conclusion

Attorneys' Fees

Requested:	\$15,461.50
Mr. Pop rate reduction:	(\$36.00)
Ms. Gregorian rate reduction:	(\$4.50)
Awarded:	\$15,421.00

Attorneys' Costs

Requested:	\$878.44
Reductions:	(\$0.00)
Awarded:	\$878.44

<u>Total Fees and Costs:</u>	\$16,299.44
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Accordingly, the undersigned awards:

A lump sum in the amount of \$16,299.44, representing reimbursement for petitioner's attorneys' fees and costs, in the form of a check payable to petitioner and her attorney, Mr. Jeffrey Pop.

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Nora Beth Dorsey

Nora Beth Dorsey
Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.